COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 1080 of 2001
(Old No. 3375 of 1984)

R.P. Singh

.....Appellant

Vs.

Superintendent of Police, C.B.I., Dehradun & another

.... Respondent

Counsel for appellant: - Sri Atul Tripathi, Advocate

Counsel for respondents: -
(1) Sri U.K. Uniyal, Sr. Advocate assisted by Sri Sobhit Saharia/CBI
(2) Sri Amit Bhatt, Addl. G.A. for the State

Approved for reporting.
~~Not approved for reporting~~.

Date: May 10, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 1080 of 2001
(Old No.3375 of 1984)

R.P. Singh S/o Ranjit Singh,
34-D, Type-III Quarter Railway Electrification,
Mathura

.....Appellant

Versus

1. Superintendent of Police, CBI, Dehradun
2. The State

..... Respondents

Dated: May 10, 2007

Sri Atul Tripathi, learned amicus curiae for the appellant
Sri U.K. Uniyal, Sr. Advocate assisted by Sri Sobhit Saharia, learned counsel for the CBI/Respondent No.1
Sri Amit Bhatt, learned Addl. G.A. for the State/Respondent No.2

HON. DHARAM VEER, J.

This appeal has been preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*) against the judgment and order dated 19.11.1984 passed by Special Judge, Anti Corruption, U.P. (East), Dehradun, in C.B.I. Case No.2/83, CBI Versus R.P. Singh, whereby the learned Special Judge has convicted the appellant R.P. Singh under Section 161 I.P.C. and awarded one year's simple imprisonment. The appellant was further convicted under Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947 (Act II of 1947) and sentenced to undergo one year's simple imprisonment and to pay a fine of Rs.500/- and in default of payment of fine, 15 days' simple imprisonment was awarded. Both the sentences were directed to run concurrently.

2. This appeal was filed by the appellant in the Allahabad High Court and this High Court of Uttaranchal

now Uttarakhand has received the same under Section 35(2) of U.P. Reorganization Act, 2000.

3. In brief, the prosecution story is that Sri Net Ram S/o Dal Chand was working as a contractor in the name and style “M/s Dal Chand & Sons” 4861 Laddu Ghati, Pahar Ganj, New Delhi. In the year 1981-82, he had taken a contract of railway line electrification under the Chief Project Manager, Mathura. Being the sole owner of his firm, he himself was looking after the electrification work, entrusted to his firm and his bills were approved for payment by the Executive Engineer, Electrification, Mathura. The appellant R.P. Singh was posted a Head Clerk in the office of Executive Engineer and all the bills were scrutinized and processed by him. On 15.4.1982, Sri Net Ram went to the office of the appellant and requested him to get the two separate amounts of his earnest money and security deposit refunded. The appellant promised to help him in the matter provided he was paid Rs.500/- as illegal gratification. Not only this, but the appellant also made it clear that unless the amount of Rs.500/- was not paid to him, he would not let the payment made. Sri Net Ram was further told that if he will not oblige the appellant, even his daily visits to the office would bear no fruits. Sri Net Ram told the appellant that he would come in the other week. On 20.4.1982, he lodged a report with the Superintendent of Police CBI/SPE, Dehradun and a case was registered under Section 161 I.P.C. and Sri H.C. Bisht, Inspector CBI was deputed to lay the trap. On 22.4.1982, Sri H.C. Bisht arranged for two independent witnesses and on 23.4.1982 at 10:00 A.M., Sri Net Ram and witnesses collected in Room No.10 of the Brij Bihar

Hotel. Sri Net Ram on being directed, produced five currency notes of Rs.100/- each and applied phenolphthalein powder to all the five currency notes. The demonstration of phenolphthalein powder was also given by applying the powder to a piece of paper, Ex.6 which was given in the hands of Sri S.R. Yadav and when the hands of Sri S.R. Yadav were dipped into the solution of sodium carbonate, its colour turned pink. The said piece of paper was sealed in an envelope, Ex.7. The currency notes, Exs. 1 to 5 were returned to the complainant with the instructions that he would offer these very currency notes to the appellant when the appellant would demand for the bribe. A memorandum, Ex.Ka-18 was prepared by the Investigating Officer and other members of police party along with the witnesses took position outside the office of the appellant at 12:25 P.M. on 23.4.1982. The complainant Sri Net Ram entered the office of the appellant and a little after, he along with the appellant came out in the verandah and on being demanded the bribe of Rs.500/- by the appellant, Sri Net Ram offered the currency notes, Exs.1 to 5 to him. The appellant accepted the money, counted the currency notes and slipped them into the left hand side pocket of his trouser. In the meantime, the witness Sri R.C. Sharma passed the signal and the police party whereupon Sri H.C. Bisht caught hold of the appellant and after giving his introduction, asked him to produce the bribe money. The appellant took out the currency notes, Ex.1 to 5 and handed them over to Sri H.C. Bisht, who got the hands of the appellant dipped into the mixture of sodium carbonate, as a consequence the colour of mixture turned pink. The said solution was sealed in a phial, Ex.10. Sri H.C. Bisht then checked the

number of currency notes and verified them from the entries made in memorandum, Ex.Ka-18. Then, Sri H.C. Bisht along with the appellant and other witnesses went into the room of Assistant Engineer, Sri Gupta and sealed the recovered currency notes in an envelope, Ex.11. The trouser of the appellant was also taken into custody and its left hand side pocket was dipped into the solution of sodium carbonate, in the consequence whereof, its colour also turned to be pink. The said trouser was sealed in an envelope, Ex.14. The mixture of sodium carbonate was also sealed in a phial, Ex.12. All the recovery proceedings were reduced to writing in memorandum, Ex.Ka-19, a copy of which was supplied to the appellant under his signatures, Ex.Ka-19/A. Sri H.C. Bisht, CBI Inspector then took in his custody some documents from the office. He also prepared site plan, Ex.Ka-23. Thereafter, the appellant was taken to police station.

4. On 27.4.1982, investigation was entrusted to CBI Inspector Sri M.C. Joshi, who on having recorded the statements of all the witnesses, collected sanction for prosecution of the appellant and submitted the charge sheet Ex.Ka-25 against the appellant under Section 161 I.P.C. and section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947 (Act II of 1947). The appellant was charged by the learned Special Judge, Anti Corruption, U.P. (East), Dehradun vide order dated 4.4.1983 under Section 161 I.P.C. and Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947 (Act I of 1947). The charge was explained to the appellant who pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined as many as six witnesses. P.W. 1 S.K. Srivastava is the Confidential Superintendent to the Chief Project Manager, Railway Electrification, Mathura. He has proved the sanction Ex.Ka-1 accorded by the Chief Project Manager, Railway Electrification, Mathura for prosecution of the appellant. P.W.2 Sri M.S. Chalodia was the Senior Clerk posted in the office of Railway Electrification. According to his testimony, a sum of Rs.15,000/- was due on the Department for payment to Sri Net Ram. He also testified that the appellant Sri R.P. Singh dealt with the bills of Sri Net Ram including the payment of earnest and security money. P.W.3 Sri Net Ram is the complainant witness. He has narrated the entire prosecution story. He proved that the appellant demanded from him an illegal gratification of Rs.500/-. Since he was not willing to pay it, he lodged his complaint with the Superintendent of Police, CBI, Dehradun on 20.4.1982 and on 23.4.1982, the appellant was arrested red handed by the CBI Police. He proved the recovery memo Ex.Ka-19. P.W.4 R.C. Sharma is a witness of the occurrence. He corroborated the prosecution theory of the appellant having demanded and accepted a bribe of Rs.500/- from Sri Net Ram. P.W.5 Sri H.C. Bisht is the trap-laying officer. He testified that after recording the statement of the complainant, he went to Mathura and after having met him at Mathura in Brij Bihar Hotel, he fetched two independent witness and held a demonstration on 23.4.1982 at 10:00 A.M. in Room No.10 of the Brij Bihar Hotel. He further stated that he applied Phenolphthalein powder to currency notes, Ex.1 to 5 and handed them over to Sri Net Ram with the instructions to hand over the same currency

notes to the appellant. He added further that Sri Net Ram offered the same currency notes to the appellant who accepted the same and soon thereafter the appellant was arrested. He also proved recovery memo Ex.Ka-19. P.W.6 Sri M.C. Joshi is the investigating Officer of this case. He has recorded the statements of the witnesses, seized some documents concerning this case and submitted charge sheet Ex.Ka-25 against the appellant.

6. Thereafter, the statement of the appellant u/s 313 Cr.P.C. was recorded. The appellant denied all the allegations made against him and stated that he has been falsely implicated due to jealousy.

7. In his defence, the appellant examined three witnesses including him. D.W.1 Sri Suresh Chand Aggarwal, a contractor of Railway Electrification, Mathura stated that the appellant Sri R.P. Singh had given Sri Net Ram a sum of Rs.500/- for purchase of a fan. D.W.2 Sri Bishambhar Dayal Sharma is another Railway Contractor. He testified that the appellant was an honest man and during his tenure, the said appellant never demanded any illegal gratification from him. He further stated that on 23.4.1982 at about 12:30 P.M., he went to the office of the appellant and saw him standing with Sri Net Ram outside his office. Sri Net Ram handed over the sum of Rs.500/- to Sri R.P. Singh telling him that he had not been able to bring the fan for him, so he had been refunding the money. Sri R.P. Singh demanded the sum of Rs.60/- more which Sri Net Ram owed to him. Sri Net Ram promised to pay it later and in the meantime, the CBI Police arrested the appellant. D.W.3 Sri R.P. Singh narrated his defence theory and testified

that the amount of Rs.500/- which he had accepted from Sri Net Ram was his own money, which he had given to Sri Net Ram for bringing a fan from Delhi. The balance of Rs.60/- was also due on Sri Net Ram and when he demanded that balance amount from Sri Net Ram, he made an excuse and promised to pay it later. He has also stated that Jagdish Chandra, Chief Project Manager, Railway Electrification, Mathura was not his appointing, dismissing and disciplinary authority and he was not competent authority to grant sanction for prosecution.

8. I have heard Sri Atul Tripathi, learned amicus curiae for the appellant, Sri U.K. Uniyal, Sr. Advocate assisted by Sri Sobhit Saharia, learned counsel for CBI/Respondent No. 1 and Sri Amit Bhatt, learned Addl. G.A. for the State/Respondent No.2

9. The learned amicus curiae has argued that sanction Ex.Ka-1 is not as per law. The sanctioning authority namely the Chief Project Manager, Railway Electrification, Mathura was not competent to accord the sanction. According to learned counsel for the appellant, the valid sanction for prosecution of the appellant could be granted by the Chief Project Manager, Railway Electrification, Wadodra as all the powers of Chief Engineer, Railway Electrification, Allahabad vested in him after the said post was abolished. In support of this argument, letter Ex.Kha-2 of the Additional Director, Railway Electrification, Railway Board has been brought on record. This letter appears to indicate that on voluntary retirement of Sri K.Rangachari, Sri N.D. Gupta, Chief Project Manager, Wadodra was directed to exercise all the powers of General Manager in respect of railway

electrification projects until further arrangements. It is true that the Chief Project Manager, Wadodra was directed to look after the work of General Manager but it does not invalidate the sanction Ex.Ka-1 accorded by the Chief Project Manager, Mathura for prosecution of the appellant because it is brought on the record that the powers of the Chief Engineer, Railway Electrification and the Chief Project Manager, Mathura were equal. P.W.1 Sri S.K. Srivastava has specifically stated that the powers of the Chief Engineer, Railway Electrification, Allahabad and Chief Project Manager, Mathura were same as both the officers were of equal ranks. He has also stated that Chief Project Manager, Mathura is the disciplinary authority competent to take disciplinary action against the appellant having the dismissing powers. It is not challenged by the appellant that the Chief Engineer, Allahabad and the Chief Project Manager, Mathura were of equal ranks. The appellant admitted that he was under the administrative control of Sri Jagdish Chandra, Chief Project Manager, Mathura. When it was so, it does not stand to reason that how the Chief Project Manager, Wadodra have been the disciplinary authority of the appellant. The Chief Project Manager, Wadodra would have taken the administrative control of the Electrification Project without taking the powers of other Chief Project Manager. As a matter of fact, it not necessary that the removal of a public servant must be by the same authority, who made the appointment or by his direct superior. It is enough that the removing authority is of the same rank or grade as the appointing authority was. Therefore, it is ample clear that the sanction accorded by the Chief Project Manager, Mathura under whose administrative control the appellant was

serving at the relevant time cannot be said to be faulty in any respect. Accordingly, the sanction Ex.Ka-1 is a valid sanction and it is as per the law and rules.

10. From the above said evidence and the facts and circumstances of the case, it may be observed that the currency notes of Rs.100/- each, Ex.1 to 5, were received by the appellant Sri R.P. Singh from Sri Net Ram, P.W.3 on 23.4.1982 at 12:30 P.M. Since this vital fact is admitted to the appellant, the burden lies upon him to prove his defence theory and rebut the inference that can be drawn that it was not the bribe money. It has been alleged by the appellant that in August/September, 1981, Sri Net Ram took from him a loan for Rs.500/- for reconstructing the wall which had collapsed resulting in the death of a labourer and injuries to 3-4 others. The appellant has further stated that the said amount was repaid after a short while but unfortunately the same wall fell down again in December, 1981 and the appellant on request of Sri Net Ram lent a sum of Rs.500/- to enable him to reconstruct the said wall. Sri Net Ram refunded Rs.440/- out of the second loan amount of Rs.500/- with a balance of Rs.60/- outstanding against him. On 30.3.1982, the appellant had given him a sum of Rs.500/- to Sri Net Ram for purchase of a fan for him from Delhi. It was this amount of Rs.500/-, which was refunded to the appellant by Sri Net Ram on the date of occurrence. In other words, the tainted money recovered from the appellant is said to be his own money. All these allegations have been denied by Sri Net Ram, P.W.3.

11. It may be pointed out that the argument of the appellant is an afterthought theory of the appellant and it

appears that it has been developed by him in due course of time. The appellant was first examined at the time of framing the charge on 4.4.1983 and he was put a specific question that he demanded and accepted Rs.500/- as illegal gratification for extending his help to Sri Net Ram for refund of his earnest money. The appellant simply denied the prosecution case and did not utter a single word to say that the money recovered from him was his own money that he had given to Sri Net Ram earlier for buying a fan for him from Delhi. That was a right step to have put up his defence case. Besides this, it may also be mentioned that appellant did not report after the occurrence to his superior officers that he had been falsely implicated in a case of bribe, although, he received his own money from Sri Net Ram. The appellant has argued that he informed his superior officers orally about it, but no such officer had appeared before the trial court in order to support the appellant on this point. Thus, it is clear that it is an after thought story of the appellant in order to save himself. In view of these facts and circumstances, there appears to be no substance in the defence theory.

12. From the evidence of the witnesses and after perusing the entire records, it has come that the trap laying officer P.W.5 Sri H.C. Bisht after arresting the appellant went inside the office and completed the formalities of writing recovery memo there and getting the articles sealed. Sri H.C. Bisht remained in the office till 5:30 P.M. and during this period he seized records from the department vide seizure memo, Ex.Ka-20, prepared site plan Ex.Ka-23, sealed recovery currency notes and phials of pink solution of sodium carbonate and prepared

memo Ex.Ka-19. All these facts go to prove beyond any shadow of doubt that the investigating agency was acting in straightforward manner with all bonafides in the matter. Even the appellant had admitted that he was arrested by Sri H.C. Bisht. Further, Sri H.C. Bisht recorded the entire proceedings in memorandum, Ex.Ka-19, prepared site plan Ex.Ka-23 and seized some documents by virtue of recovery memo, Ex.Ka-20. Besides this documentary evidence, Sri H.C. Bisht has proved by his testimony that he chalked out the trap plan at Brij Bihar Hotel, Mathura on the date of occurrence, gave a demonstration to the witnesses and successfully captured the appellant with the bribe money. There is no cogent reason for Sri H.C. Bisht to have made a false implication of the appellant.

13. In this regard, learned counsel for the appellant has further argued that he was an interested witness besides being a police personnel and therefore, his evidence should be discarded. The evidence of the police witness cannot be brushed aside merely because he is a member of police force. However, the evidence of such witness is to be scrutinized with care and caution and on having scrutinized the evidence of Sri H.C. Bisht with that much of care and caution, I find that Sri H.C. Bisht is a wholly reliable witness. He was cross-examined at length but nothing has come out from his cross-examination which may create a doubt in his statement.

14. Further, the prosecution case is supported by the evidence of the independent witness P.W.4 Sri R.C. Sharma, who had heard the conversation between the appellant and Sri Net Ram and during the course of said

conversation, Sri Net Ram requested the appellant to get his earnest and security money refunded whereupon Sri R.P. Singh, the appellant had asked him whether he had brought the money and thereafter Sri Net Ram offered Rs.500/- Exs. 1 to 5 which were accepted by the appellant and after counting them, he put them in his left pocket of his trouser. Sri H.C. Bisht also heard and watched this conversation, although he was not expected to be close to the complainant and the appellant at the relevant time. Sri R.P. Singh and Sri Net Ram after coming out of the office walked towards point 'B' where the bribe was demanded and accepted by the appellant Sri R.P. Singh. Since Sri H.C. Bisht was standing at point 'D' as shown in site plan Ex.Ka-23, hence he had an opportunity to hear and watch the conversation as the distance between points 'B' and 'D' was hardly 8 fts. and it seems to be quite probable that Sri H.C.Bisht also heard the conversation and thus, evidently the evidence of Sri Net Ram stands duly corroborated by the evidence of Sri R.C. Sharma and Sri H.C. Bisht.

15. No other point was pressed by learned amicus curiae for the appellant.

16. From the evidence discussed above and the statements of the witnesses and the entire evidence on record, it is well established beyond reasonable doubt that the appellant R.P. Singh has taken bribe of Rs.500/- on 23.4.1982 at 12:30 P.M. at Mathura and that money was not the money which was given by Sri R.P. Singh to Sri Net Ram for purchasing the fan and this story is an afterthought story and it has got no value. The said story

was only cooked up just to save himself from the offence committed by him.

17. For the reasons recorded above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 19.11.1984 passed by Special Judge, Anti Corruption, U.P. (East) Dehradun convicting the appellant under section 161 I.P.C. and awarding one year's simple imprisonment, further convicting the appellant under Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947 (Act II of 1947) and sentencing him to undergo one year's simple imprisonment and to pay a fine of Rs. 500/- and in default of payment of fine, 15 days' simple imprisonment, is hereby confirmed. Both the sentences shall run concurrently.

18. Let the record of the case be sent to the trial court for compliance of the order.

(Dharam Veer, J.)

Rajeev Dang